

Approved as Submitted: July 7, 2004

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – JUNE 16, 2004**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy  
Late: Council/Agency Members Chang and Sellers

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

**2.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 215 Tennant Avenue, APN: 817-04-002  
Negotiating Parties:  
    For City: City Manager, Director of Public Works, City Attorney, and Attorney  
                    Gale Connor  
    For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin  
Closed Session Topic/Under Negotiation: Price and Terms of Payment

**3.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 95 Tennant Avenue, APN: 817-04-006  
Negotiating Parties:  
    For City: City Manager, Director of Public Works, City Attorney, and Attorney  
                    Gale Connor  
    For Property Owners: Marko and Klara Gera  
Closed Session Topic/Under Negotiation: Price and Terms of Payment

4.

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority:	Government Code 54956.8
Property:	145 Tennant Avenue, APN: 817-04-008
Negotiating Parties:	
For City:	City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
For Property Owners:	Joseph Hernandez, as trustee; et al
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

5.

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Authority:	Government Code section 54956.9(a)
Name of Case:	Hacienda Valley Mobile Estates v. City of Morgan Hill.
Case Number:	United States Supreme Court 03-1571

6.

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority:	Government Code section 54956.9(a)
Case Name:	Hacienda Valley Mobile Estates v. City of Morgan Hill
Case Number:	Santa Clara Superior Court, Case No. CV 807708

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:07 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:07 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken on closed session for items 2-6 and that Closed Session item 1 was continued to the conclusion of the agenda.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Bob Hunt led the Pledge of Allegiance.

**RECOGNITIONS**

Mayor Kennedy recognized retiring Parks & Recreation Commissioners Daniel Kenney and Rick Page, and Mobile Home Rent Commissioner Mark Moore. On behalf of the Council, he thanked them for their years of service to the community of Morgan Hill. The recognition of retiring Library Commissioner Mary Ellen Salzano was deferred to a future meeting date.

Mayor Kennedy presented proclamations to Cricket Rubino and Maria Faust, YMCA Volunteers.

Mayor Kennedy announced a proclamation for Nordstrom School Principal Nancy Milo in recognition of the Distinguished School Award.

Mayor Kennedy presented a proclamation to Bruce and Dave Hall, employees of Digital Auto Drive/Velodyne Acoustics for their Third Place finish at the Autonomous Vehicle Race.

### **CITY COUNCIL REPORT**

Council Member Tate reported that he is involved with the library on two different fronts. The first is the direction of the new library. He indicated that a sizeable portion of next week's Council meeting will be dedicated to the report from the Library subcommittee consisting of Mayor Kennedy and himself. He indicated that the parcel tax that pays for approximately 22% of the operating cost of the library is due to expire next year. He said that an effort was made to extend the parcel tax in March 2004, noting that this effort was unsuccessful, receiving 61% of the 67% votes required. He indicated that a lot of work is taking place to determine whether citizens would approve an extension to the parcel tax. He said that the Library subcommittee is encouraged that the State will not invoke as much take away from the library as the library will be exempt from the special district shift that will be taking place. He said that the City's budget, proposed for adoption this evening, did not anticipate State level funding. Therefore, the budget will be revisited in August. He stated that he is also involved with an Ethics Subcommittee of the City Council, indicating that there is a plan to have 3 to 4 workshops with subcommittee appointees from other commissions and advisory boards that will be developing an ethics policy for the City of Morgan Hill. He indicated that the first meeting is scheduled to take place on June 29, 2004. He stated that he no longer serves on the Council's Economic Development Subcommittee (EDS), but stated that he still attends the Chamber's Economic Development Partnership Committee meeting. Since the City formed the partnership with the Chamber on economic development, he senses a real sense of ownership, responsibility, enthusiasm and optimism. He was encouraged that the Chamber is having a lot more individuals showing up for these meetings and to see that there is good discussion/things in the works.

### **COUNCIL SUBCOMMITTEE REPORT**

Mayor Kennedy said that he has noticed that more residents seem to have suntans/sunburns. He felt that this may be attributed to the fact that the City opened the aquatics center this past weekend. He said that an overwhelming grand opening event took place and that everyone was pleased with the tremendous response to the opening of the aquatics center. He said that this is another wonderful gem in the necklace of gems the City is building, all part of the Vision of Morgan Hill. He said that the City needs to find

additional parking spaces because the center is so successful. He encouraged citizens who have not visited the aquatics center to do so.

### **CITY MANAGER REPORT**

City Manager Tewes noted that later on the agenda, the Council will be asked to adopt the City's budget for Fiscal Year 2004-05. He said that this budget is based on an assumption about what will happen at the State level. He said that it is an assumption that the City will lose approximately \$350,000 in local revenue by transferring it to Sacramento to assist the State in balancing its budget the next two years. He stated that this is the compromise that was reached with the Governor in exchange for agreeing to support a constitutional amendment to protect local revenues thereafter. He indicated that the Governor has reiterated his strong support of the compromise this week. However, the bad news is that the constitutional deadline for the adoption of the State budget did not take place yesterday.

### **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Joe Muller, on behalf of the Community Health Foundation, stated that he was in attendance to introduce a new doctor to the community.

Ted Fox, CEO of St. Louise Regional, introduced Dr. Nimisha Shah who recently relocated from Kentucky.

Dr. Shah indicated that she will be providing internal medical services to the community at the DePaul Health Center located at St. Louise Drive. She indicated that her husband is also board certified in internal medicine and that he would be joining her practice as it grows successfully.

Mr. Fox said that St. Louise Regional Hospital, Daughters of Charity and O'Connor Hospital have a dream and a vision, one shared by the City Council and members of the Community Health Foundation: restoring medical services in this area. He felt that Dr. Shaw is a great start toward this dream and vision. When Dr. Shah's practice takes off, her husband will be able to join her as well. He stated that it is critical for Dr. Shah and other practitioners to have the community's support and that their services are used.

Mayor Pro Tempore/Vice-chair Sellers entered and took his seat on the dais.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Rosemary Roselle, marketing chair for the Poppy Jasper Film Festival, indicated that the Poppy Jasper Film Festival Committee is kicking off the first fundraising event: the showing of Grease on July 10 in the Granada Theater. She requested that community members participate and come in costume. She stated her appreciation of the Council's support.

Kim Bush, Chairperson for the Poppy Jasper Film Festival, indicated that the Poppy Jasper Film Festival is a project of Media Access Coalition of Central California, the fiscal guardians of Channel 19 (MHAT). She thanked the City Manager for allowing them to put on a mini film festival in the Playhouse at the 2003 Taste of Morgan Hill. She indicated that the film festival will be held on November 12-14. The Committee was focused on several points in putting together this film festival: 1) it will be called the Poppy Jasper Film festival named for the stone that is only found in Morgan Hill; 2) will only feature short films; 3) and that California filmmakers would be featured. She stated that the Committee would like to raise funds for high school scholarships for students interested in films. She thanked Mr. Manou Mobedshahi, owner of the Granada Theater, for the use of the facility for the film festival and future projects. She also thanked Mr. Paul Gunsky, president of the Cinelux Theaters who lent his expertise to bringing the Granada back on line.

Darryl Manning, on behalf of the Morgan Hill Independence Day Inc. (IDI), thanked the Council for its continued co-sponsorship of the community's Fourth of July celebrations. She said that it is the ongoing participation of the City, local businesses and residents that make the festivities unique and wonderful. She indicated that IDI is a volunteer organization. She thanked City staff, Bill Ferguson with the Santa Clara County Fire Department and all others involved in local administration for providing her with the assistance and advice in the preparation of the 2004 Independence Day festivities. She identified the upcoming Fourth of July events. She introduced the IDI Fourth of July committee members in attendance this evening: Bruce Tichinin, immediate past president; Bob & Maurine Hunt, parade co-chairs; and Joe Sampson, City-Police department liaison.

Mayor Kennedy requested that item 1 and Council Member Tate requested that items 6, 8 and 20 be removed from the Consent Calendar.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-5, 7, and 9-13 (amending items 15 and 16 to correct typographical errors) as follows:*

### **2.        MONTHLY FINANCIAL & INVESTMENT REPORT SUBMITTAL**

**Action:** **Directed Staff** *to Submit Each Month's Financial and Investment Report to the City Council on the Fourth Wednesday of the Following Month; Or, If Not City Council Meeting Were Scheduled on That Date, To Submit the Report to the City Council on the Third Wednesday of the Following Month.*

3. **SUBDIVISION, SD-04-01: COCHRANE-COYOTE ESTATES (PHASES 9 THROUGH 11)**  
*Action: **Took No Action**, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
4. **SUBDIVISION, SD-04-08: TILTON-GLENROCK**  
*Action: **Took No Action**, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
5. **EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES**  
*Action: **Authorized** the City Manager to Execute a Contract in an Amount Not to Exceed \$63,000 for Contract Planning Services. Approval of the Contract Extension is Contingent upon City Council Approval of Planning Division's Fiscal Year 2004-2005 Budget as Recommended for Contract Labor Services.*
7. **REQUEST FOR CITY COUNCIL CO-SPONSORSHIP OF THE POPPY JASPER FILM FESTIVAL**  
*Action: **Agreed** to Co-Sponsor the Poppy Jasper Film Festival Fundraiser Event/Film Festival in Name Only.*
9. **RESOLUTION REQUESTING AUTHORIZATION UNDER SECTION 21221(h) OF CALIFORNIA CODE FROM PUBLIC EMPLOYEE'S RETIREMENT SYSTEM (CalPERS) FOR BRUCE CUMMING TO BE EMPLOYED FOR MORE THAN 960 HOURS IN CALENDAR YEAR 2004 – Resolution No. 5802**  
*Action: **Approved** Resolution No. 5802, Requesting CalPERS for an Extension for Interim Police Chief Bruce Cumming to be Employed for More Than 960 Hours in Calendar Year 2004.*
10. **EXTENSION OF EMPLOYMENT AGREEMENT FOR INTERIM APPOINTMENT OF CHIEF OF POLICE**  
*Action: **Authorized** the City Manager to Execute an Extension to the Employment Agreement with Interim Police Chief Bruce Cumming in an Amount Not to Exceed \$28,750, With All Other Conditions the Same.*
11. **ACCEPTANCE OF BUTTERFIELD BOULEVARD LINEAR PARK PROJECT**  
*Action: 1) **Accepted** as Complete the Butterfield Boulevard Linear Park Project in the Final Amount of \$393,746.56; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
12. **CONTRACT FOR CONSTRUCTION OF EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I**  
*Action: **Awarded** Contract to McGuire and Hester for the Construction of the Edmundson Water Main Distribution Project in the Amount of \$349,699, Subject to Review and Approval by the City Attorney.*

13. **PROFESSIONAL SERVICES CONTRACT FOR FEASIBILITY ANALYSIS FOR INTERIM SEWER TRUNK CONNECTION**  
*Action: **Authorized** the City Manager to Execute a Professional Services Contract in the Amount of \$35,410 with Schaaf & Wheeler for a Feasibility Analysis of an Interim Sewer Trunk Connection.*
14. **CONTRACT FOR PARADISE PARK PLAYGROUND EQUIPMENT REPLACEMENT PROJECT**  
*Action: 1) **Awarded** Contract to Bellicitti & Pellicciotti Company, Inc. in the Amount of \$79,990 for Construction of the Paradise Park Playground Equipment Replacement Project; and 2) **Authorized** an \$8,000 (10%) Construction Contingency.*
15. **CONTRACT TO PROVIDE PLAN CHECKING SERVICES ON AN AS-NEEDED BASIS**  
*Action: 1) **Approved** Fiscal Year 2004-2005 Professional Services Contract with Harris & Associates to Provide Contract Plan Checking Services on an As Needed Basis at a Fee Not to Exceed \$100,000, Subject to Adoption of the Fiscal Year 2004-2005 Budget; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.*
16. **CONTRACT FOR INFORMATION TECHNOLOGY MANAGEMENT SERVICES**  
*Action: **Authorized** the City Manager to Execute an Agreement with the City of Palo Alto in an Amount Not to Exceed \$150,000 for Information Technology Management Services, Subject to Review and Approval of the City Attorney.*
17. **ADOPT ORDINANCE NO. 1676, NEW SERIES, AS AMENDED**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1676, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1618, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DAA-02-09 FOR APPLICATION MMP-02-02: DEWITT – MARQUEZ TO ALLOW FOR A SIX-MONTH EXTENSION TO THE APPROVED DEVELOPMENT SCHEDULE. (APN 773-08-014).***
18. **ADOPT ORDINANCE NO. 1677, NEW SERIES, AS AMENDED**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1677, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, AMENDING ARTICLES II AND III, THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE.***
19. **ADOPT ORDINANCE NO. 1678, NEW SERIES**

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**Action:** ***Waived** the Reading, and **Adopted** Ordinance No. 1678, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 15.04 (Administrative Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AND ADDING SECTION 15.04.100 (Violations of Chapter - Penalties) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, THEREBY AMENDING PROVISIONS OF THE UNIFORM ADMINISTRATIVE CODE REGARDING BUILDING ADVISORY COMMITTEES (UAC SECTION 204), VIOLATIONS (UAC SECTION 205), CERTIFICATE OF OCCUPANCY-CERTIFICATE ISSUED (UAC SECTION 309.3), and FEES (UAC TABLE 3-A).***

#### **1. MAY 2004 FINANCE & INVESTMENT REPORT**

Mayor Kennedy noted that although the year is 92% complete, the City's revenue is coming in at 87%. He inquired whether this was less than what was anticipated.

Finance Director Dilles indicated that the number is consistent with what staff has been expecting and what was projected in the budget. He said that the number is low primarily because the City received less vehicle license fees as a result of State take ways. However, the State will return these fees a few years from now. Also, the City's sales tax is down. Therefore, this number is consistent with the projections that the Council has been seeing and as seen in the budget.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Accepted** and **Filed** Report.*

#### **6. AQUATICS CENTER RENTAL INSURANCE REQUIREMENTS**

Council Member Tate said that insurance has been an issue with the opening of public facilities. He felt that it is worth discussing insurance requirements. He said that in order to use the aquatics facility, an organization has to have \$5 million in insurance coverage. He said that it seems as though the staff report is stating that a certain group (e.g., the water polo group) should have more than \$1 million in insurance coverage. However, because of experience they cannot obtain this insurance amount. He felt that the City has to grant the request because a group cannot secure the \$5 million insurance coverage. On the other hand, groups cannot secure the insurance amount needed to protect the City. He felt that this is a catch 22 situation. He said that it is worth noting to the public that this is a situation the City finds itself in with its public facilities in terms of being squeezed by insurance situations and taking on a larger risk than he believes prudent. However, the City has to do this in order to make the facilities available. It is his hope that the public understands that insurance coverage is a cost that the City has to pass on to facility users.

Finance Director Dilles noted that the staff report indicates that should the insurance limits become available, the City would expect that the groups increase their insurance coverage at that time. He



concluded that the City is taking some risk by not requiring the \$5 million insurance coverage. He informed the Council that the ABAG plan indicates that this is not a unique problem. He said that a pool of cities agree that there is a higher risk associated with certain activities such as aquatics activities. From a risk management side, he would feel better if the City could get the \$5 million coverage. However, from a practical side, it is not obtainable at this time.

Mayor Pro Tempore Sellers felt that staff has proposed an interim solution. He recommended that staff explore solutions that other communities have come up with. Also, that staff consider entering into discussions with ABAG to try and enter into an agreement that would have a solution that works for all cities that have similar problems. He felt that a collaboratively/collectively effort may result in a solution that makes more sense in the long term. He agreed that the longer the City takes this route, the more likely the City would end up with an occurrence that exceeds the \$1 million limit and that the City would be looking at some significant financial risks.

Finance Director Dilles informed the Council that the City has coverage through ABAG's plan. Should the City have a loss of this magnitude, the ABAG plan would provide the City up to \$10 million in coverage. However, the City would see its premiums go up significantly.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Endorsed** the Proposed Policy Concerning Minimum Insurance Requirements for Tenants who Lease or Operate Aquatics Center Facilities.*

**8.        REQUEST FOR COUNCIL SUPPORT OF AMERICANS FOR NATIONAL PARKS – Resolution No. 5801**

Council Member Tate stated that although he supports National Parks be fully maintained, he noted that the City is not in charge of National Parks. He indicated that the Council recently passed a budget that cuts maintenance of City parks. He did not believe that it was the City's place to tell anyone that they have to spend more on maintenance. Therefore, he could not support the measure.

Mayor Kennedy said that he requested this item be agendaized for Council action. He stated that the intent was to ask the City's congressional representatives to support maintaining and keeping the National Parks for everyone to enjoy, thus, the reason for bringing this item forward. He said that the resolution is in support of this philosophy.

Council Member Sellers indicated that the Legislative Subcommittee reviewed this bill and recommends Council support of the resolution.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and second by Council Member Carr, the City Council, on a 4-1 vote with Council Member Tate voting no,: 1) **Adopted** Resolution No. 5801 in Support of Americans for National Parks; and 2) **Directed** the City Clerk to Forward a Copy of the Resolution to the National Parks Conservation Association.*

**20.        AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. TO CO-**

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**SPONSOR THE JULY FOURTH CELEBRATIONS**

Council Member Tate noted that the staff report indicates that the City is appropriating \$25,000, including in kind services while the fiscal impact references \$22,000. He requested clarification of what amount the Council is being asked to approve.

Lieutenant Joe Sampson said that in the past, the City has held to a \$25,000 cap. It was his understanding that the City attempts to look at the in kind cost that would be a result of police and public works cost. Staff performs an estimated calculation of what this cost might be based on the salary and the time estimated that would be dedicated to the event. The City then looks at what has been appropriated from the Community Promotion's budget. These two numbers are taken and combined. Based on what the City is looking at this year, the estimate, based on the numbers, is \$22,000. He stated that it is the City's goal not to exceed \$25,000 to give the City leeway should an incident occur.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the City Manager to Sign the Co-Sponsorship Agreement with Independence Day, Inc.*

## ***City Council and Redevelopment Agency Action***

**CONSENT CALENDAR:**

**Action:** *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 21-24, as follows:*

**21. AGREEMENTS WITH JOHNSON LUMBER**

**Action:** ***Authorized** the City Manager/Executive Director to do Everything Necessary and Appropriate to Make the Requested Modification to the Agreements.*

**22. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR MAY 21, 2004.**

**Action:** ***Approved** the Minutes as submitted.*

**22. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JUNE 2, 2004.**

**Action:** ***Approved** the Minutes as submitted.*

**23. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JUNE 2, 2004.**

**Action:** ***Approved** the Minutes as submitted.*

**24. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JUNE 2, 2004.**

**Action:** Approved the Minutes as submitted.

## ***City Council Action***

### **PUBLIC HEARINGS:**

**25. ZONING AMENDMENT, ZA-04-01; DEVELOPMENT AGREEMENT, DA-04-10: TILTON-GLENROCK – Ordinance Nos. 1679 and 1680, New Series**

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1679, New Series.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council Introduced Ordinance No. 1679, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR PHASE 6 OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-04-01: HALE-GLENROCK BUILDERS) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.**

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1680, New Series.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council Introduced Ordinance No. 1680, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-01 FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-9-06, 16, 17, 32 & 33) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.**

**26. DEVELOPMENT AGREEMENT AMENDMENT, DAA-00-01: CHRISTEPH-KOSICH – Ordinance No. 1681, New Series**

Planning Manager Rowe presented the staff report. He informed the Council that prior extensions were due to the need to obtain various permits and to complete the environmental process. The hold up for the project that necessitates an extension is a requirement for the path. At the time the commitment was made, the project proponent owned both parcels but has subsequently sold lot 2 and that it is now owned by a different party. He stated that the new property owner does not see a benefit to having a path as they do not plan on using it and have concerns about security and privacy. He noted that there are trees that line the private drive that would be impacted by the installation of the path. He informed the Council that the Planning Commission allowed for an amendment to occur such that the applicant be allowed to work with the City to provide an alternative commitment. He stated that the recommended action is to amend the development agreement to allow for the removal of the path requirement and for the applicant to provide an alternative, safety improvement, for the same points, and to grant the request for a sixth extension in which to commence construction.

Council Member Tate said that it was his recollection that when there are agreements in Measure P to proceed with a commitment that benefits a neighbor or neighborhood, the applicant had to submit a preliminary agreement that this would be done.

Planning Manager Rowe informed the Council that at time of submitting a Measure P application, Mr. Kosich owned both lots. He has since divided the property and sold lot 2 to another party. Therefore, the agreement no longer applies.

Council Member Carr said that there appears to be two items that are outstanding that are delaying the project. It was his belief that there are now solutions to both of these items. He inquired whether a six month extension was necessary as it would place the project in a position of building during the rainy season. He said that it appears that the City routinely applies a minimum six month extension. He recommended that extensions be considered in terms of the amount of time needed, especially when you look at pushing back construction timelines into rainy seasons, creating the possibility of having to come back and request another extension.

Mayor Kennedy opened the public hearing.

Mr. Kosich, applicant, indicated that he has an agreement with the individuals he sold the parcel to. He said they have expressed concern with security in having a path going up to their house. He stated that he would be willing to spend the money somewhere else in lieu of installing a path and widening the driveway as the property owner is concerned about the removal of trees as well. He indicated that the Fire Department has stated that he does not have to widen the driveway. He said that he plans to live in the neighborhood and that he would like to get along with the neighbors. He said that his house plans are in plan check. He said that in order to get the property owner to sign the parcel map, the property owner needs to know that the changes will not encroach onto his property with this development. If he can get the adjacent property to sign the parcel map, he would be willing to proceed with construction.

No further comments being offered, the public hearing was closed.

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**Action:**      *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1681, New Series.*

**Action:**      *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1681, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1617, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH TO INCORPORATE A SIX-MONTH EXTENSION OF TIME FOR A SINGLE DWELLING UNIT AND TO ALLOW FOR AN ALTERNATIVE MEASURE P COMMITMENT IN LIEU OF A FIVE-FOOT PATHWAY (APN 764-32-024)/(DAA-00-01: CHRISTEPH - KOSICH)** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

**27.      DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-10: COCHRANE-COYOTE – Ordinance No. 1682**

Planning Manager Rowe presented the staff report, indicating that staff distributed to the Council this evening an item at the request of Mr. Oliver that lists upgrade items that are incorporated into the market rate units and the standards that are applied to below market rate units. In the development agreement, there is reference that items for the BMR units need to be comparable to the market rate units. He stated that the list of standards that will be applied to BMR units has been reviewed by the housing division who oversees the BMR program. He informed the Council that staff finds the changes requested acceptable and recommend approval. Staff will modify the section in the development agreement to reference the handout as an exhibit.

Mayor Kennedy opened the public hearing.

Dick Oliver, applicant, apologized for bringing up the proposed modification at this late date. He said that the request comes about because he has increased the standards in the market rate housing to a level where it used to be optional upgrades. It was his belief that his BMR homes are the finest quality in the City. He said that the BMR units will keep the standard features that are appropriate. He requested that the Council approve the standards for BMR units.

No further comments being offered, the public hearing was closed.

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1682, New Series.*

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1681, New Series, by Title Only as follows: **AN***

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***ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL  
APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT, DA 03-  
10 FOR MP 02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-  
36-001, 010), amending the development agreement to incorporating the standards for  
BMR units per the list presented by the applicant, by the following roll call vote: AYES:  
Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**28. INTERIM USE PERMIT UP-04-07: DEPOT-DAYWORKER CENTER – Resolution No. 5803**

Planning Manager Rowe presented the staff report. He informed the Council that the Planning Commission recommends that the applicant provide a more detailed exit plan. He indicated that a supplemental handout was distributed this evening that provides further explanation of the applicant's exit plan. He stated that the exit plan does not meet all the requirements contained in the ordinance for an exit plan. He said that the Council could include a condition in the resolution that would require the applicant to work with staff to refine the exit plan and that the plan return to the Council for approval.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Tate stated that he served on the committee along with Joe Mueller that studied the interim use permit process. He said that it was his recollection that the committee felt that the City needed a very thorough exit plan before agreeing to the use. The Committee did not believe that the City should receive an exit plan after the fact. However, he did not recall whether the Committee defined the contents of the exit plan and that he does not see the exit plan defined anywhere. He felt that the Council needs to define what is meant by a complete exit plan. It was his belief that an exit plan needs to talk about the exit steps to be taken from day 1. He stated that he was not comfortable that the Council does not have the exit plan it believes was necessary before approving the temporary use permit.

Joe Mueller concurred that the committee was concerned about the exit plan, indicating that the Planning Commission had the same concerns. He indicated that the zoning code contains a list of several items. At the Planning Commission meeting, the applicant stated that they were having a problem looking that far forward into the future as they were trying to get through initial hurdles. He stated that he has not yet had the opportunity to review the document presented to the Council this evening. However, it was his belief that it was an issue of timing and that he was not sure as to the impact on the applicant. He said that the Planning Commission expressed concern but kept the temporary use permit moving forward based on the fact that it was staff's belief that the applicant could complete an exit plan prior to coming before the Council.

Council Member Carr stated that he had similar concerns. As this is the first time a temporary use permit is being requested, he felt that the City needs to provide some flexibility and figure out a way to make this work. It was his belief that the City would be presented with an exit plan that would identify what would take place in year three so that the exit plan would not be decided along the way. If in year three there is not a defined exit plan, pressure is not placed upon the Council where it is stated that the

use exists and that there is no need to change the location of the use. He felt that the Council could find some way/flexibility to accommodate the exit plan and not delay opening the center.

America Romero indicated that she was not the author of the exit plan presented to the Council this evening. She stated that it was her belief that the dayworker committee was given certain guidelines to follow. She said that as far as the dayworker committee was concerned, they followed the guidelines. If the dayworker committee were to be given a more detailed questionnaire as to what to address, they would be able to do so.

Council Member Carr recommended that the Council approve the temporary use permit with a one year contingency, requiring that the exit plan be completed. Further, requesting that staff work with the Planning Commission on the exit plan and that the exit plan return to the Council for review and approval. He made this recommendation in order to avoid delaying the opening of the dayworker center.

Council Member Chang recommended that the item be approved this evening and that an occupancy permit not be issued until the exit plan is approved. She felt that drafting of the exit plan would only take a couple of months, working with staff. She said that there were 3-4 items that need to be completed interior to the building as well as the parking lot and the drainage plan. She felt that the improvements can be completed in six weeks if work proceeds in full force by the dayworker committee. The only item of concern is that Mr. Weston is having a problem with the offsite improvements and that it may take 2-4 four months to resolve this issue.

City Manager Tewes said that Mr. Weston is responsible for the construction of certain public improvements to allow both the dayworker center and his adjoining property to be developed. He indicated that Mr. Weston has asked City staff a series of questions whether exemptions could be made to certain requirements. Staff has advised Mr. Weston that the ordinance is clear on some of these and that the City could not grant exemptions. He said that staff is not aware of Mr. Weston's construction schedule but that he knows that the dayworker center's ability to open is dependent upon his ability to finish the public improvements.

Council Member Carr felt that the suggestion that Council Member Chang made was a better suggestion. He said that Mr. Weston indicated a couple of weeks ago that the opening of the center was eminent, pending one item he needed to work out with public works staff. To hear that there is 3-4 months worth of work means that there is a lot of time to work on the exit plan. He felt that there was a lot of work that needs to be done and that he would appreciate the help of the Planning Commission in working on the exit plan. He felt that Council Member Tate came up with a good suggestion that the Council needs to develop standards for an exit plan. He recommended that the Council approve the temporary use permit, making the occupancy contingent upon the finalization of the exit plan.

Planning Manager Rowe read into the record the language contained in the ordinance as to what is required for the exit plan as follows: 1) The plan requires a timeline for the purchase or lease of a permanent site. 2) The availability of economic resources sufficient to move to the alternate site including but not limited to where such resources shall be received and whether such resources are dependent upon future funding efforts. 3) A plan for moving operations to the alternate site, including

personnel responsible for administering such operation. He said that items 2 and 3 are not well articulated in the exit plan submitted this evening.

Council Member Tate felt that the timeline contained in the exit plan submitted this evening could be much more thorough.

Council Member Carr said that it was his recollection that the ordinance stipulates that the exit plan is supposed to be in place before approving the permit. Therefore, the Council is making an exception; requesting the submittal and approval of the exit plan prior to the issuance of an occupancy permit.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5803, Approving an Interim Use Permit for the Day Worker Center, withholding the certificate of occupancy until such time that the exit plan is submitted and approved by the City Council.*

**29. AN ORDINANCE AMENDING SECTIONS OF THE MUNICIPAL CODE REGARDING MESSAGE ESTABLISHMENTS – Ordinance No. 1683, New Series and Resolution No. 5804**

Police Lieutenant Sampson presented the staff report. He informed the Council that based on a fee study, staff found that the City of Morgan Hill was at least \$100 or more lower in terms of the application and processing fees. He said that the City was starting to receive an influx of applications from individuals with correspondence courses. He said that the City received citizen calls and raised issues to light. He informed the Council that staff wanted to curb the potential for Morgan Hill to become a place where it is an easy target for illegal message activities to take place. Therefore, staff recommends Council approval of the changes to the massage ordinance.

City Attorney Leichter stated that the fee increases are based on the City's estimation of actual staff time incurred to implement the ordinance.

Mayor Pro Tempore Sellers felt that staff did a good job in updating the massage ordinance. He said that this was a difficult issue, when first confronted, as the City was trying to balance the needs of a legitimate business enterprise while curtailing illegal activities. He said that he wanted to make sure that the City was not going to preclude legitimate activities in the future.

Police Lieutenant Sampson informed the Council that Morgan Hill was the only community who accepted correspondence courses. He spoke with different reputable schools of massage. He indicated that these individuals stated that you need a minimum of 100-150 hours of practical experience. He stated that many of the schools are providing 300-500 hours of hands on experience.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.



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**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1683, New Series.*

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1683, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS** by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5804, Governing Fee Changes.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **30.      REQUEST TO EXTEND PROVISIONS OF ORDINANCE NO. 1641, NEW SERIES**

Planning Manager Rowe presented the staff report, indicating that Ordinance 1641 was adopted by the City Council in November 2003 in response to the high cost of construction liability insurance for attached housing units. He said that the ordinance was enacted for a two-year period and that it applies to the building allocation for Fiscal Year 2003-04 and 2004-05. He indicated that paragraph 15 of the ordinance contains a provision for an exemption that would allow for attached units to be detached (a modified setback arrangement) for an additional year if it is determined that the insurance problem still exists and there have been no reforms enacted through the state legislature to resolve the problem. He indicated that at the time the ordinance was written, it was intended as a temporary fix to allow for a modified setback with the hopes that the insurance situation would resolve itself. He said that the City would be creating small, single family detached lots. He said that the City has not had these types of units built to see what they would look like, aesthetically, and whether the City needs to make modifications to the standards. He stated that there is a z-lot configuration being proposed in the Capriano project where the units are sited further apart. However, he noted that you would still have narrow and small lots. He said that this was not something that the City wanted to adopt as a standard. He noted that the General Plan Land Use Element contains policies that address the number of detached units that can be constructed in a multi family development (e.g., less than 25% of the overall units). He informed the Council that the Planning Commission directed that the developer of the Capriano project submit a development plan that addresses the rest of the project. He said that each time the City works around the issue and not address this type of development; it limits the option for a portion of the R-2 project. The plan, as proposed, shows single family attached units that would cause the project to be prohibitive based on the insurance situation. The plan proposed, if the ordinance is extended, would

result in 100% detached dwelling units in an R-2 portion where the general plan policy stipulates only 25% can be detached units. To extend the ordinance would be inconsistent with the City's General Plan and would create a narrow, small lot, detached category. He requested Council direction as to whether or not to extend the provision of the ordinance. If so, staff would need to return to the Council with an ordinance amendment for its consideration.

City Manager Tewes noted that the City has a request from a developer that the City extend the interim ordinance for an additional period to allow him to submit a map that is consistent with the modified approach. Should the Council agree that it wishes to extend the interim ordinance, staff would return with the appropriate ordinance to accomplish the Council's direction. In any event, the map must comply with the General Plan that does not allow all of the units in an R-2 zoning district to be of this type of housing product. He informed the Council that staff is bringing the request of Glenrock Builders to the Council's attention. Staff is asking the Council whether it wishes staff initiate an amendment to the ordinance to allow for its provisions to be extended under the circumstances described by Mr. Rowe. An alternative would be to not extend the ordinance and have the annual review contemplated by the ordinance later this year.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia informed the Council that he submitted a vesting tentative map for the balance of the project in conjunction with his Measure P application. He said that Ordinance No. 1641 specifically calls for z-lots. He said that the z-lots were developed by the architects for his project who are based out of Orange County. He noted that the z-lots are proposed along Daugherty Avenue where one garage sits to the back or the front. He said that the objective of the original application was to place the garages in a carriage way or alleyway in an R-2 product. He said that he and his architects strived not to create a series of garage doors one after another. In the Carriage project, he tried to place the garages to the rear in an alleyway so that you would see fronts of houses, porches and a very invited front scene. He felt that it was the intent of Ordinance No. 1461 to create an interest and still have the feeling of attachment. He said that the z-lots give you the attachment because each side of the garage lines up and gives the appearance of attachment. He stated that he had to submit what the Council approved earlier this evening because he could not show the z-lots being attached. He said that he is developing 45 lots and that he has 5 different and distinct floor plans. He said that this is a difficult subject that is caused by insurance problems and that the problem is not getting better. He requested the ability to continue with his project and that the Council instructs staff to process a z-lot product.

Planning Manager clarified that the General Plan states that less than 25% of the units can be detached in an R-2 zoning district. He said that what Mr. Garcia is requesting detached units in a portion of the R-2 project. He stated that a way to work around the general plan issue is to amend it and have the project rezoned to R-1 that allows for 100% z-lots and modified setbacks. He said that it is not known whether the insurance problem would be the same 2-3 years from now. Alternately, the land use policy could be amended to state that the City will allow a greater percentage or all of the units to be detached; using modified setbacks or the Council could amend the land use plan to designate the project as single family in order to address the general plan issue.

Council Member Carr inquired what the amendment would do to the price of a home moving from a purely attached product to a z-lot product.

Mr. Garcia said that a z-lot product would be significantly more expensive to construct because you have more driveway, an exterior wall and roofline that is detached. He said that the price of the z-lots is determined by the market place. He said that 10% of the units are committed to be sold at a moderate affordable rate.

Dick Oliver stated his support of Mr. Garcia's position for a different reason. He said that he has three projects that fall under this situation. The first group of units would be built as modified detached and then come back to the Council to see if it likes them. Should the Council like them and the insurance situation is still the same, he will ask the Council to extend the ordinance at that time. He said that his situation is unique as he has a property owner who has asked that he develop a five acre parcel located at the corner of Wright and Hale Avenues. He said that the problem with the site is that it is situated low and that the Santa Clara Valley Water District wants to take 100 feet of the land in order to extend Llagas Creek and Santa Clara County wants to extend/widen Hale Avenue to 55 feet. He stated that he is trying to figure out a way to design/lay out 24 units that makes sense as the geometrics does not work. By extending the ordinance, it gives him a chance to design a unique/creative project on this particular parcel, similar to a flag lot configuration.

No further comments were offered.

Mayor Kennedy noted that Mr. Heichtman is requesting that the Council initiate proceedings to amend the City's modified setback ordinance.

City Attorney Leichter clarified that should it be the Council's desire to initiate proceedings to amend the City's modified setback ordinance, staff would return to the Council with an extension of the ordinance and with language that clarifies precisely some of the permutations under the ordinance.

Mayor Pro Tempore Sellers inquired why you would attach two units.

Mr. Rowe said that their scale and massing is comparable to single family detached on adjoining lots so that they integrate better. Also, the cost for construction would be less, placing insurance aside. He said you are able to accomplish moderate and BMR units with attached units.

Mayor Pro Tempore Sellers said that if the City is able to achieve many of the benefits in a different way, it may be worth considering. He appreciated that this would take extra staff work but felt that this might be an opportunity for the City to be more creative. He felt that there might be additional benefits if the City moves toward this direction.

**Action:** *It was the consensus of the City Council to **Request** staff to initiate proceedings to amend the City's modified setback ordinance.*

City Attorney Leichter noted that staff indicated that the cost to process the zoning text amendment would be \$4,612. It was her belief that Mr. Heichtman, on behalf of Mr. Garcia and Glenrock Builders, have requested that this fee be waived. She requested Council direction on whether it wishes to bring back a waiver of these fees.

Mayor Pro Tempore Sellers noted that Mr. Hechtman argues that the application fee burden should not be borne by the applicant given that this is the direction being imposed. However, he noted that a benefit is being accrued.

Council Member Tate noted that everyone has the same insurance problem.

Mr. Garcia stated that he would agree to pay the cost for the text amendment and that those who benefit from this ordinance amendment could reimburse him.

**31. HEARING FOR EXEMPTION TO UNDERGROUNDING OF UTILITIES – 600 TENNANT AVENUE**

Director of Public Works Ashcraft presented the staff report, indicating that the developer has requested that he be allowed to pay in lieu fees rather than underground utilities. He stated that staff agrees that it would be more cost effective and a project could be constructed a lot cheaper if constructed in a large scale. Therefore, staff supports the developer's request.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Granted** the Exemption to the Requirement to Underground Utilities with Payment of In Lieu Fees for the Proposed Development at 600 Tennant Avenue.*

**32. SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT – Resolution Nos. 5805, 5806, 5807, 5808, 5809, 5810, 5811, 5812 and 5813**

Council Member Chang indicated that she has a conflict with item 32c.

City Attorney Leichter indicated that it is her belief that Mayor Kennedy has a conflict with item 32b. She stated that it has been the City's practice that the entire Council stays to hear the item presented as each Council member will be voting on item 31a. Those members who have individual conflicts can step down from b and c or that Mayor Kennedy and Council Member Chang can step down for the entire item.

Deputy Director of Public Works Struve presented the staff report, indicating that staff is recommending a rate increase in 3 of the 20 sub areas for fiscal year 2004-05. He stated that this affects 141 of the 755 property owners within the Fox Hollow/Murphy Springs landscape and lighting district.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution Nos. 5805, 5806 and 5807, **Excluding** the Conte Gardens and Sandalwood Estate Zones.*

Mayor Kennedy recused himself from action item 32b and stepped outside the Council Chambers.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Adopted** Resolution Nos. 5808, 5809, 5810,, **Referring Only** to the Conte Gardens Zone.*

Mayor Kennedy resumed his seat of the dias.

Council Member Chang recused herself from action item 32c and stepped outside of the Council Chambers.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution Nos. 5811, 5812, and 5813, **Referring Only** to the Sandalwood Estates Zone.*

Council Member Chang resumed her seat on the dias.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** the City Clerk to Notice a Copy of the Resolutions.*

### **33. REVENUE INCREASE REVIEW**

Finance Director Dilles presented the staff report.

Mayor Kennedy stated that the City has to come up with \$1.2 million to balance the budget, noting that staff has cut \$900,000 from next year's budget.

Mayor Pro Tempore Sellers said that the City has projected into subsequent years of anticipated expenditures, revenues and reserves. He stated that at the end of a five year projection, the City would still maintain a 25% reserve of general fund revenues. He said that although prudent in normal times, he expressed concern as to the appropriateness of 25% in reserves given that the City is asking for additional resources. He inquired whether there was a possibility or resolution that might include some reference to the reserve level to indicate what the reserve level will be at the point where the Council collects additional revenue. Conversely, before collecting additional funds, the reserve levels would need to be at a lower point.

Finance Director Dilles said that you should not look at the level of reserves and that focus has been given to balancing revenues and costs. In order to achieve this balance, the City will need to make structural changes. Therefore, the City would need to look at both sets of circumstances.

Mayor Pro Tempore Sellers said that the reason for having the discussion this evening is due to the fact that the City anticipates that its revenues will not meet its costs as projected in the future. He felt that the Council needs to factor in reserves because the voters will. He did not believe that it would be appropriate for the Council to go to the voters and state that it has a plan that takes all this information into account.

Mayor Kennedy felt the problem that the City faces is a structural problem. He said that the City will be utilizing its reserves over the next 3-4 years. Unless the City fixes the structural problem, the City will be drawing down its reserves. He said that the City has demonstrated that by cutting \$900,000 from the City's budget that this Council has taken action of being responsible and cutting expenses. He noted that the City is decreasing its park maintenance. Also, the City has frozen hiring of employees, resulting in sharing in responsibilities and placing additional workload on all employees. He said that this is a City that is operating and has always operated on a very lean budget. He stated that this is a time where new revenue sources are needed. He felt that the Council needs to place options on the ballot for voters to make a rational decision. He recommended that the Council take action to place a ¼% sales tax measure on the November 2004 ballot. This revenue would give the City the opportunity to close the gap not the fault of the City but due to take aways from the State of over \$500,000 of the City's Vehicle License Fees. In addition, the City will be giving the State another \$360,000 each year for the next two years. He said that the City has done its job and that the Council needs to ask the voters if they are willing to pay to provide the services that are desperately needed to maintain a quality of life.

City Manager Tewes said that whenever the City proposes new taxes, under proposition 218, it requires a vote of the people. He said that as a general law city, it is authorized to place before the voters several tax measures, one of which is a ¼ cent sales tax if used for a general purpose. If used for a general purpose, it must be placed on the ballot on the same election that council members stand for election. He said that in working with the City Clerk and the County Elections office, it has been determined that all paper work must be ready by July 21, 2004 to place a tax measure on the November 2, 2004 ballot. He takes the Mayor's suggestion to be a request that the appropriate paperwork be drafted and presented to the City Council for the calling of an election and proposing a new tax for the November 2, 2004 ballot.

Council Member Tate said that in the presentation made by City Treasurer Mike Roorda at the previous meeting, there was a table presented that depicted all revenue options. He stated that he was interested in investigating further the fire suppression district. However, he did not understand how the amounts were derived. He felt that there may be variables that the Council may choose from. He inquired whether the \$4 million figure was a recommended amount. He also inquired as to the reason for the \$800,000 recommendation for the lighting and landscape district.

Finance Director Dilles responded that the number was an identified amount but that it could be less than the amount listed.

City Treasurer Roorda said that there were a number of items where the Council had some level of discretion in terms of how it would structure a tax. He said that staff calculated an estimate where staff felt it best represents what the tax might be able to generate for the City but that the Council may wish to adjust the amount to be collected as it moves toward a final recommendation. He said that there were a couple of items where the Finance & Audit Committee did not feel were good to siphon the number down. In such cases, it was indicated that the fee was to be determined.

Council Member Chang inquired how you would determine the amount of revenue to be generated with a  $\frac{1}{4}\%$  sales tax. She noted that it was indicated that a  $\frac{1}{4}\%$  sales tax could generate \$1.1 million in revenue. She inquired as to the consideration for recommending the  $\frac{1}{4}\%$  sales tax as the way to proceed.

Mayor Kennedy noted that staff has indicated that the  $\frac{1}{4}\%$  sales tax would raise \$1.1 million annually. The City's structural deficit is \$1.2 million. He felt that the  $\frac{1}{4}\%$  sales tax comes close to closing the gap. How did not know how staff determined that the  $\frac{1}{4}\%$  sales tax would generate \$1.1 million.

City Manager Tewes indicated that staff took 25% of the existing sales tax revenue and assumed that this additional tax would have no adverse affect on sales because of the increase tax.

Council Member Chang said that she and Council Member Carr worked through an elaborate matrix system. They suggested a criterion for individuals to consider. She felt that if it is a well prepared/thought out tax, it would be supported by the voters.

Mayor Kennedy indicated that his  $\frac{1}{4}\%$  sales tax recommendation is a general tax that would require a majority vote whereas some of the others would require two-thirds voter approval. He said that fees, with the exception of the 911 emergency dispatch fee, would require voter approval. In terms of the likelihood of support, he felt that the  $\frac{1}{4}\%$  sales tax would have a greater chance of being supported by a majority of the voters and that it closely matches the gap that needs to be filled. Should the Council decide to place the  $\frac{1}{4}\%$  sales tax on the ballot, he recommended that it have a 2-year sunset. At the end of this period, the Council can assess whether the tax needs to continue.

Council Member Carr did not believe that a sunset clause would address the structural need. He felt that the Council needs to have a lot of discussion and figure out how this might work so that it does not place the City into a structural problem again. He inquired whether there were any other cities in the county that have their own sales tax rate. He felt that a sales tax is a county-wide tax and that citizens expect to pay the same in one city that is paid in another city in the county.

Finance Director Dilles said that a new law allows cities to implement a sales tax on their own. He stated that it used to be that it had to be a countywide sales tax and that an individual city could not implement its own sales tax without special legislation. He said that he is aware of some cities who will be conducting an election on sales tax.

Council Member Carr stated that he was not generally opposed to the  $\frac{1}{4}\%$  sales tax but felt that there are some questions that need to be answered before proceeding with any of the revenue enhancement items.

He stated that he needs to understand and have a good community dialogue on the feasibility of increasing the cost of any product in Morgan Hill by  $\frac{1}{4}\%$ , including what it would do to economic development in Morgan Hill. What will it do to sales in Morgan Hill and to small shops? He felt that there were other questions that need to be answered as well. He inquired whether the Council was set on finding one option that would answer the dollars needed. Is the Council willing to examine smaller options that would spread the burden across the community in a fair way? He said that one of the issues the Finance & Audit Committee struggled with is that of user fees. A question was whether the City should try to get as much cost recovery that it can from user fees before going to the voters for a broad based tax increase. He noted that he and Mayor Kennedy are taking up the question about incremental economic development, including examining inhibitors to economic development put together by staff. He said that the Economic Development Subcommittee will be bringing back a recommendation to the Council soon. This will allow the Council to discuss additional economic opportunities and how this can help the City. He felt that these were the types of discussions that the Council needs to have, whether it is the five Council members or a greater community dialogue, before he is willing to identify one revenue source over another.

Council Member Tate did not know what  $\frac{1}{4}\%$  in sales tax would do to large ticket items. He noted that the City wants to attract other auto dealers and that when an individual goes shopping; this is where the  $\frac{1}{4}\%$  can make a difference.

Mayor Kennedy agreed that dialogue and discussion was important but acknowledged that the City is running out of time if it is in fact interested in placing a measure on the November 2004 ballot. With respect to economic development and structural deficit, he stated that economic development will allow the City to close the gap, if successful. He said that there is no guarantee that economic development would close the gap.

City Manager Tewes stated that if it is the Council's intention to place a measure on the ballot, the Council would need to make a motion to initiate the preparation of all necessary documents. He said that it would take 2-3 weeks to complete the documents for a ballot measure.

Council Member Chang felt that a well planned tax that passes would mean a lot versus hastily placing a tax measure on the ballot just because timing is close. It was her belief that the City should be conducting a community survey to see what a tax would be used for (e.g., police, additional services). She recommended that a public opinion poll be conducted. She did not believe that voters would support a new tax if it solely maintains existing services. Should the Council be interested in placing a measure on the November 2004 ballot, she requested that the City receive public input in order to get a sense of community support. If talking about a true structural change, she felt that the process needs to be done correctly.

Mayor Pro Tempore Sellers indicated that in order to conduct a survey correctly, it would take six weeks to conduct.



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Finance Director Dilles indicated that a fire suppression tax would be a parcel tax to be voted upon by the 8,500 residential parcels, whether they reside in Morgan Hill or not. He said that it would take a majority vote to approve a fire suppression tax.

Council Member Chang said that it was her recollection from the last report prepared by the Economic Development Subcommittee that it projects approximately \$250,000-\$300,000 additional revenue for the next year. Therefore, the City does not necessarily need \$1.2 million. Therefore, the \$800,000 that can be generated from a 911 dispatch service fee may work.

Council Member Carr felt that the City could structure something like a fire suppression district (parcel tax).

Finance Director Dilles clarified that staff was not suggestion that the City raise \$4 million but that it was trying to show a range of possibilities. He said that the fee could include the cost of the fire contract, building a new station, and completion of a new fire master plan. He said that one issue that might arise for building a fire station is the fact that the City is collecting development impact fees for this purpose.

Council Member Tate noted that you need a full crew to operate a new fire station, noting that the City has impact fees to build a fire station.

City Manager Tewes clarified that \$4.1 million has been budgeted next year for existing services. The contract provides that should the City establish a third fire station and staffing, it would result in an additional \$2 million.

Council Member Carr indicated that the City could design a fire suppression district that does not necessarily cover the entire contract but covers enough of the contract to be able to pull out of the contract the structural deficit in the general fund.

City Manager Tewes said that if the City is trying to find resources to meet one of its most important services. He said that the City can conduct a city parcel tax or a city-wide Mello Roos district in order to pay the funds for the operation of a fire station. Should the Council wish to focus on fire, there are different ways to approach funding such as a fire suppression district that requires the establishment of a district, approval by Lafco and a number of other actions. He said that the Council's current policy, with respect to fire, is that the City has a contract with County Fire that extends until September 2007. During the intervening period, staff is to work with the City's neighbors to see if a regional district could be created. The district idea has come up in context if trying to figure out how it would get the rest of the unincorporated areas, and perhaps Gilroy, to join in a south county district approach.

City Attorney Leichter said that the Council needs to understand that unlike the City's current contract with County Fire where the City retains authority over the fire function, the Council would be ceding its authority over the fire functions with a South County fire district. The City would not longer be responsible for fire services as it would be under the auspices of a Fire Protection District with its own governing board.

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Mayor Pro Tempore Sellers stated that he was not necessarily in concurrence with the election timeline as far as placing an item on the fall 2004 ballot.

City Manager Tewes informed the Council that at its June 23 meeting, staff will identify the various filing dates for the City of Morgan Hill's election. Staff looked at the currently scheduled Council meeting against the election requirements and noted that the Council meeting prior to the date by which all documents must be into the County Registrar's office is July 21. He said that staff has built in some opportunity for checking documents to make sure that the important matters such as an election is not missed by pushing a measure to the eleventh hour. Should the Council wish to hold a special meeting for the purpose of placing a measure on the ballot, the Council could push the dates even further.

Mayor Pro Tempore Sellers said that he appreciates the significant amount of work that has been conducted by the Finance & Audit Committee. He stated that he wished that the work had been completed sooner so that the Council could have had more time to give it consideration for this fall. However, he was not sure whether the Council needs to move forward this fall. He felt that it was imperative that the Council address the question of the reserve. He stated that he was not convinced that 25% is the right point at which the Council should be going to the voters and that it is the right level to declare an emergency. He felt that the Council has a lot of alternatives to be considered. He noted that a sales tax is regressive. He stated that individuals and families of lower income will pay a higher percentage of their income toward a sales tax and expressed concern that it would be a greater imposition on them than it would be on those with a higher income level. He stated that he was not prepared to make a decision this evening. Should the Council move quickly out of concern for the fall timeline, there are questions that would be raised that the Council cannot answer at this time and that it would be facing in the fall without adequate information. He recommended that the Council give this issue final consideration on July 28. He said that this might be a point at which the Council would make a final decision. He said that having a special meeting would have the added benefit of giving attention to this issue and perhaps would engender a broader base support/community input that would plant the need for a survey. He appreciated the fact that Mayor Kennedy stepped forward with a preference, but that he was not ready to support this one or any other option this evening as there are other items to consider.

Mayor Kennedy noted that the Council worked extensively on establishing this level of reserve, agreeing to this reserve level at the January 2004 workshop. The Council agreed to spend down the City's reserves in a responsible manner, yet keeping a sufficient reserve for future emergencies. He inquired what Mayor Pro Tempore Sellers would suggest is a timeline for an election calendar.

Mayor Pro Tempore Sellers stated that the Council could consider a measure on July 21 or July 28, 2004. He said that he was not ready to proceed this evening as there are too many considerations. He said that he was struggling with a fire suppression district and its implications. He said that the majority of the revenue alternatives do not require the City to move forward in November 2004. However, some of the more attractive ones such as the sales tax would require the City to place a measure on the ballot this fall.

Mayor Kennedy said that in order to have a public dialogue, the Council needs to start its discussions. He said that July 21 would be the absolute latest date that the Council needs to state whether it wants to consider the option of placing a measure on the November 2004 ballot in order to give staff time to complete all the election documentation.

Council Member Tate said that he raised the fire suppression item previously. He noted that the Council adopted a strategy to maintain the City's existing budget but were not able to provide new services at its January 2004 workshop. He said that in order to meet the City's fire master plan and provide adequate safety services to the community, the Council needs to increase fire revenues. He did not know whether the increased revenues should come from a fire suppression district or one of the other alternatives. He sees the fire suppression revenue being used solely for the expansion of fire services. When he looked at the alternatives for increasing income, he did not review the sales tax column. He said that a utility user's tax is an accepted revenue source by many communities. It is fair and less regressive than a sales tax and does not have the penalty of having individuals shopping elsewhere because the City may become a community that has an extra tax. When he looked at alternatives of what should be done short term, he felt that the City could make a case for a utility users tax if it is sold to the public for the benefits it would accrue and not point to its history in the community.

City Treasurer Roorda stated that the Finance & Audit Committee wanted to make an attempt to provide the Council with some tools to help assist with discussions. He inquired whether it would assist the Council to organize its discussions along the lines of some of the items identified this evening such as fairness and equity, neutrality, and certainty. Each Council member can record its own emphasis, noting that time may be another critical factor.

Mayor Kennedy recommended that the Finance & Audit Committee develop a matrix that it believes would assist the Council as a tool to help guide it through discussions.

Council Member Carr said that a matrix has not been presented to the Council as the Finance & Audit Committee did not want to direct the Council's discussion in a pointed fashion by including it in the packet.

Council Member Chang inquired whether it would be possible to narrow down the taxes the Council is willing to consider to 3 or 4, using an evaluation criterion. As an alternative, the Council selects 3 or 4 important measures and conducts a public opinion survey in order to obtain feedback as to what would be acceptable to the public. She said that she hears the Council supporting four items: a sales tax, utility tax, fire suppression tax, and emergency fees. She inquired whether it would be possible to develop a questionnaire and poll the general public.

Mayor Kennedy recommended that the Council be given a copy of the matrix. The Council could rate its options, and discuss this item further on July 7, 2004.

Mayor Pro Tempore Sellers stated that he found matrixes to be valuable. He concurred that the Committee should have provided the Council with a matrix. The Council can take a look at the matrix by July 7 and narrow the revenue options to four, refining as deemed appropriately.

Council Member Carr stated that he was not sure whether it was the task of the Finance & Audit Committee to bring back a recommendation to the Council. He said that the Committee struggled with this fact. The Committee continued to refer to the goals from the Council's goal setting session, noting that this was not what was being asked of the Committee. Thus, one of the reasons the Committee did not include a matrix for Council consideration. He said that the matrix may have been a good discussion starter for the Council. He felt that it was the Committee's task to bring a process forward to talk about these issues. The Committee presented several questions and several sets of criteria. He said that the Council has focused on item 4, taxes, and not the other questions.

Mayor Pro Tempore Sellers said that it would be important for the Council to review the matrix and the numbers as it would be a valuable tool.

Council Member Tate expressed concern with identifying four revenue alternatives. He stated that he was interested in doing something with fire for the additional service to be provided. He said that if what the Council is looking at with this exercise is only to maintain existing services, he did not believe that the fire needs would fall under this category. He said that he would support additional fire services.

Council Member Chang recollected that a prior survey indicated that citizens would not support a tax if the City is only maintaining current services and not providing additional services.

Council Member Carr noted that the Finance & Audit Committee felt that the Council needed to answer why revenue increases are needed. Is it needed to cover the gap, or was it needed to cover the gap and provide additional services? He felt that this is a question that each Council member needs to answer.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *It was the consensus of the City Council to **Direct** the Finance & Audit Committee to provide it with the matrix in advance of the July 7 meeting to allow the Council to conduct its own scoring and assessment for Council discussion at said meeting.*

#### **34. COYOTE VALLEY SPECIFIC PLAN**

Contract Planner Bischoff presented the staff report, indicating that several activities have taken place since the Council last heard this item. He updated the Council on the status of the development of the Coyote Valley Specific Plan by the City of San Jose. He stated that a community workshop was held on June 12, a task force meeting was held on June 14, and Mayor Kennedy, along with representatives from other South County agencies, had the opportunity to meet with Mayor Gonzalez. He indicated that a follow up meeting is planned with South County agencies on June 23 and that a technical advisory committee meeting is to be held next week.

Mayor Kennedy indicated that a group of representatives from South County agencies took the consensus report from the last summit workshop where various representatives from South County entities were in attendance. The group of representatives had a good meeting with Mayor Gonzalez. He

said that each presented respective issues. With respect to Morgan Hill, the items discussed were: 1) traffic congestions, especially if the jobs were to be built first as it would create a tremendous load on transportation systems; and 2) impact/demand for housing in Morgan Hill, especially if the industrial portion is built first. Morgan Hill Unified School District Board Member George Panos spoke about the need to identify school sites of adequate size to meet school needs. A question was asked whether it made sense to split Coyote Valley off from the School District. Board Member Panos responded that the City School Board is still evaluating this issue. He said that it is his understanding that this decision has not made. Gavilan College President Steve Kinsella talked about the fact that the college bond has been approved and that there is a need for additional community school facilities in Coyote Valley. Gilroy City Council Member Paul Correa confirmed the same issues that the City of Morgan Hill has. He indicated that Mayor Gonzalez agreed to take these concerns forward to the task force as well as to continue to meet with the group in order to maintain the dialogue and communication that has been established. He informed the Council that he attended the Task Force meeting, along with Mr. Bischoff, and presented the same items of concerns at the task force meeting as much he could within the 2 minute timeframe that they allow. He said that it was clear that the Task Force wants to complete their mission, regardless of how quickly and haphazardly it is done. He stated that several of the Task Force members also complained about inadequate dialogue and communication between each other.

Mr. Bischoff addressed the status of the Coyote Valley Specific Plan and what took place at the community workshop held on June 12. He said that 3 issues were discussed: 1) the location of creeks and infrastructures through the area; 2) desirable densities/land uses within the area; and 3) density. He addressed the basics of the plan, indicating that all alternatives reviewed include three interchanges with Highway 101: 1) Coyote Creek; 2) Bailey; and 3) north of Bailey. All of the plans show five connections with Monterey Road. He said to the extent that more people can use Monterey Road and Highway 101, the fewer people would try to traverse through local city streets. He addressed the land use assumptions that were included in all scenarios. He stated that there will be some level of mixed use development. There will be no basic industry or warehouses. What is being proposed is office and R&D uses as low as 2 stories and as high as 20 story building(s). Residential density development would be as low as 10 units per acre and as high as 100 units per acre on buildings as high as 20 or more stories. Being discussed is the creation of distinct neighborhoods (e.g., 10 neighborhoods) and the establishment of a downtown/community core near the intersection of Bailey and Santa Teresa Boulevard. He stated that at a prior workshop there was discussion about a focal point such as a lake. There was also discussion about the type of street system to be installed. He said that there was a general agreement that there should be a parkway system, indicating that this has been included in all alternatives. He stated that it is assumed that there will be a light rail system that will serve Coyote Valley. He indicated that there were three transit compositions discussed. He stated that everyone seemed to be supportive of bringing Fischer Creek down to its original location, adjacent to the foothill. They like the idea of a looping circulation system and that there was not much preference for where the parkway system should be. He said that it is being proposed that the highest residential density should be sited along the core area with a variety of building heights. Lesser density and lower building heights are being proposed away from the core. They would like to protect existing neighborhoods from high rises. Also, proposed is a gateway, off of Bailey, into the core area and transitioned density into the greenbelt.

Mr. Bischoff informed the Council that the City of San Jose now plans to come up with three specific land use alternatives over the next two months. What they will bring to the next workshop and Task Force meeting will be plans as well as the analysis of potential impacts. He said that the City of Morgan Hill has expressed concern about traffic impacts. It was stated that they would evaluate traffic impacts of all three alternatives to a certain extent. An issue that came out of the Task Force meeting was the greenbelt area. He stated that residents of the greenbelt areas have attended meetings and expressed concern about what the greenbelt means to them. There is concern that they would be the “have nots.” At the meeting, City of San Jose staff indicated that they would be ramping up their evaluation of the southern area and will be looking at options for adding value to properties in this area (e.g., transferring of development rights from one portion of the valley to another, the potential to allow further subdivision of this area). The City is hoping to come to some conclusion by September. He stated that the Open Space Authority is also weighing in on this and have indicated their interest in trying to create a vision or identify what they believe would be acceptable land uses for this area. He indicated that the Open Space Authority will be holding a meeting on June 28 to begin their discussion. He informed the Council that another meeting of the South County agencies will be held on Wednesday, June 23 at 4:00 p.m.

Council Member Tate indicated that there are other concerns that deal with timing and other issues that could have a tremendous impact on Morgan Hill.

Mayor Pro Tempore Sellers inquired whether there was discussion about altering the job/housing balance (e.g., will the City of San Jose proceed with the siting of jobs before building housing)?

Mayor Kennedy said that in his conversation with Mayor Gonzalez, he stated that the City of San Jose is looking/leaning toward phasing and constructing jobs and housing at the same time.

Mr. Bischoff indicated that the 50,000 jobs and 25,000 housing units were numbers that were developed almost 20 years ago. Although they may have appeared to be good numbers, they were not based upon a detailed analysis of the carrying capacity of the area. He indicated that the task force is not analyzing these numbers. He stated that he asked the San Jose planner responsible for this project what would happen if it was found that the numbers are not doable. It may be found that in order to put these many individuals and jobs in this area, the City will end up with buildings so tall that they are not economically feasible. He inquired whether there was a potential to revisit this issue with their City Council. Their response was that they would have see how the alternatives come out and that it may be a possibility that their City Council may revisit the issue. He said that the City of San Jose is struggling with the ancillary/support uses needed for this area (e.g., a need of a 100 acre college campus by Gavilan College, minimum sizes needed for an elementary schools, neighborhood parks).

Mayor Kennedy recommended that if there are additional comments that they be brought to the June 23 meeting.

Mayor Pro Tempore Sellers indicated that he would not be in attendance at June 23 meeting. He felt that it was imperative that the Morgan Hill City Council impress upon the City of San Jose that it is prepared to do whatever it takes to have these concerns addressed.

Council Member Tate said that the Council is bound to identify where money will be taking from when additional funds are added to the budget. He noted that the Council is not doing so in this case.

Mayor Kennedy opened the floor to public comment.

Joe Mueller felt that Mr. Bischoff hit the high points. He noted that the greenbelt area is the most heavily parcelized of any of the three areas. The comment from the Open Space Authority representative on the Task Force was alarming. They basically stated that they are more interested in the hills than they are the flat lines and that they were open to negotiations. He said that if you look at the Open Space charter, you will find that heavily parcelized land is not a priority to them because it is too difficult/expensive to obtain. He said that this is alarming considering the amount of effort the City is putting in to the urban limit line discussions and the assumptions that this group is making about what San Jose is to do with Coyote Valley.

No further comments were offered.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Appropriated** \$15,000 From the Current Unappropriated General Fund Balance.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **35.     ADOPTION OF FISCAL YEAR 2004-2005 BUDGET – Resolution Nos. 5814 and MHRA-251**

Director of Finance Dilles presented the staff report. He indicated that staff will be bringing back the corrections to the South County Regional Wastewater Authority budget next week for Council review and approval.

Mayor/Chairman Kennedy opened the public comment. No comments were offered.

Mayor/Chairman Kennedy stated that the Council will be approving a budget that was the result of a lot of hard work on the part of staff and Council budget workshops held earlier. He complimented staff for putting together an excellent budget and process.

### **Acting as City Council:**

**Action:**        *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Resolution No. 5814 of the City of Morgan Hill Adopting the Fiscal Year 2004-2005 Annual City Budget and Adopting Appropriations Limit for Fiscal Year 2004-2005.*

**Acting as Redevelopment Agency Board:**

**Action:**        *On a motion by Agency Member Chang and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** Resolution No. MHRA-251 of the Redevelopment Agency of the City of Morgan Hill Adopting the Fiscal Year 2004-2005 Annual Agency Budget.*

**Acting as City Council and Redevelopment Agency Board:**

**Action:**        *On a motion by Council/Agency Member Chang and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **Approved** the Capital Improvement Plan.*

**CLOSED SESSIONS:**

Mayor/Chairman Kennedy announced that the Council/Redevelopment Agency would reconvene closed session to discuss the below continued closed session item(s).

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 10:40 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 12:09 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.



**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:10 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**